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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO DIVISION**

**IN RE DA VINCI SURGICAL ROBOT  
ANTITRUST LITIGATION**

This Document Relates to:  
  
ALL ACTIONS.

Lead Case No. 3:21-cv-03825-AMO

**DEFENDANT'S MOTION FOR  
LEAVE TO FILE RESPONSE TO  
PLAINTIFFS' STATEMENT OF  
RECENT DECISION**

The Honorable Araceli Martínez-Olguín

1 Pursuant to Civil Local Rules 7-3 and 7-11, Intuitive respectfully requests leave to  
2 file the one-page Response to Plaintiffs’ Statement of Recent Decision attached hereto as  
3 Exhibit A.

4 Under Civil Local Rule 7-3(d)(2), parties filing a Statement of Recent Decision  
5 must do so “without argument.” Instead of adhering to Civil Local Rule 7-3(d)(2)’s requirement,  
6 Plaintiffs’ Statement argued that Judge Thompson’s recent decision in *Lambrix v. Tesla, Inc.*,  
7 No. 3:23-cv-01145 (“*Lambrix IP*”), “squarely addresses Intuitive’s argument in support of its  
8 motion for reconsideration.” Dkt. 276 at 1:10-17.

9 That argument is neither proper nor accurate. The primary thrust of Intuitive’s  
10 Motion for Reconsideration is that, given the Court’s ruling *denying* summary judgment for  
11 Plaintiffs on market definition and power as to the primary market, Plaintiffs have *not*  
12 established a separate, single-brand aftermarket even under their own view of the law, and the  
13 Court should grant reconsideration “[o]n that basis alone.” Dkt. 271 at 1:25-2:2. *Lambrix II*  
14 changes nothing with regard to that issue. And the ultimate question of whether this Court  
15 should follow *Lambrix II*—Intuitive respectfully submits it should not—can and should be  
16 deferred until a later date, and decided with the benefit of full briefing and argument. *See*  
17 Dkt. 271 at 4.

18 Permitting Intuitive to file the attached response will not prejudice any party and  
19 will not cause undue delay. Accordingly, Intuitive respectfully requests that the Court grant  
20 Intuitive leave to file the attached response and direct the Clerk of Court to enter Exhibit A  
21 hereto as filed on the docket in this case.

1 Dated: June 20, 2024

By: /s/ Kenneth A. Gallo  
Kenneth A. Gallo

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